

1954

April 16

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CONCORD, N.H.

Mr. William D. Deal, Jr.,
 Assistant to Director
 Fish and Game Department
 State House Annex

Dear Sir:

You have requested an opinion from this office as to the meaning of the terms "self-hunting" and "to run at large," as contained in R. L. c. 180, s. 36 as amended by c. 241, Laws of 1947.

"Self-hunting" as used in s. 36 supra, may be defined as any dog that pursues or harasses game birds or quadrupeds or sheep, while at large, of its own volition. This is a matter of fact and cannot be pre-determined. "At large," as applied to a dog, is when it is vagrant, when it runs at will, when it is absolutely beyond control or call and is acting on its own initiative, with no connection physical or sympathetic between the dog and master. Upala v. State, (Ohio), 153 N.E. 215; Commonwealth v. Dow, 51 Mass. 382.

With all the above definitions in mind, the section referred to does not prevent dogs from being in the woods while under the control of the master during the dates specified. However, some twenty-one years after the passage of this act, the Legislature provided further in R. L. c. 241, s. 11, that permits may be issued to allow training of dogs when accompanied by or under the control of the owner or handler, upon game or fur-bearing animals (except deer), during the closed season on such game. Thus it can be seen that s. 36 of R. L. c. 180 prevents self-hunting dog from being at large during the time specified, and s. 11 of R. L. c. 241, allows the training of dogs (under a permit) on game or fur-bearing animals during the closed season.

The end result of the provisions of our laws as they now stand is that an owner of a dog may have his dog in the woods, under his control.

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and not be violating s. 36 of chapter 180 supra; further, he may allow his dog to hunt and pursue game and fur-bearing animals, during the closed season on such game and fur-bearing animals, by first securing a permit from the director to do so. Nothing in the statutes would prevent a "cat" or bear hunter from using his dogs under s. 36 of c. 180 provided they are not "at large," and nothing in s. 11 of c. 241 would necessitate his application for a permit, inasmuch as this section relates only to game or fur-bearing animals, which terms, as defined, do not include bear and "cats."

Very truly yours,

Arthur H. Bean, Jr.,
Assistant Attorney General

ATB:EM